

PATENT**Application # 10/519,637**

Attorney Docket # 1030-018

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REMARKS

Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

Each of claims 10, 119, 122, 163, and 164 has been amended for at least one reason unrelated to patentability, including at least one of: to explicitly present one or more elements, phrases, and/or words implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 121 and 176-198 have been cancelled without prejudice or disclaimer to expedite allowance. Claim 199 has been added. It is respectfully submitted that no new matter has been introduced.

Claims 1-120, 122-175, and 199 are now pending in this application. Each of claims 1, 120, 122, 123, 124, 174, and 175 are in independent form.

I. The Restriction Requirement

In response to the Office Action dated 8 November 2006, Applicant elected certain species with traverse. In support of the traverse, Applicant noted that at least claims 1-175 meet the "unity of invention" requirement because they fulfill the requirement that they be "linked to form a general inventive concept" and/or because "there is a technical relationship" among the claimed subject matter "that involves at least one common or corresponding special technical feature". For example, each of claims 1-175 comprises, *inter alia*, "a second tubular mesh enclosure attached to said first tubular mesh enclosure" or similar language.

In reply, the present Office Action made the restriction requirement final, and without providing any evidentiary support, stated that "the feature of 'a second tubular mesh enclosure

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attached to said first tubular mesh enclosure' does not form a special technical feature of the listed species."

Applicant respectfully traverses this unsupported statement and the resulting improper finality of the restriction requirement, and respectfully submits that:

1. the "expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art" (see MPEP 1893.03(d));
2. with respect to the parent application (10/208,631, which issued on 5 June 2007 as U.S. 7,226,240), the feature of "a second tubular mesh enclosure attached to said first tubular mesh enclosure" or similar language was found to sufficiently define a contribution that each claim of that parent application, considered as a whole, made over the cited prior art to the extent the Office was willing to allow those claims; and
3. Applicant has filed a terminal disclaimer disclaiming any term of the present application that would extend beyond that of the parent application.

Therefore, Applicant respectfully encourages the Office to recognize that the "second tubular mesh enclosure..." limitation of each of claims 1-175 is a "special technical feature" that creates unity of invention between those claims. Consequently, the restriction requirement is clearly improper, and Applicant respectfully requests reconsideration and withdrawal thereof.

II. The Objection to the Drawings

The drawings were objected to under 37 CFR 1.83(a) as not showing every element of the claims. Applicant respectfully traverses.

The cited regulation explains that the "drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box)."

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Applicant respectfully directs attention to FIG. 2, activity 2020, which is labeled as “[i]nset delivery mechanism into proximal end of tube”. In the originally-filed application, page 13, paragraph 43 explains that “[a]t activity 2020, a delivery mechanism, such as a blower hose or an auger outlet, can be inserted into an open proximate end of the mesh tube.” The originally-filed application further explains, at page 14, paragraph 45, that “the blower hose can be terminated by a cone or funnel-like attachment”, such as that shown in FIG. 1. Finally, FIG. 2 shows activity 2040, which is labeled “withdraw[ing] delivery mechanism from tube”. The detailed description explains, at page 15, paragraph 49, that “[a]t activity 2040, the delivery mechanism can be withdrawn from the mesh tube when the mesh tube has been filled to the desired level”. Thus, “every feature of the invention specified in the claims” is shown in the drawings. For at least these reasons, reconsideration and withdrawal of the objection to the drawings is respectfully requested.

III. The Indefiniteness Rejections

Each of claims 10, 119, 122, and 162-164 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Each of these rejections are respectfully traversed as moot in view of the amendments to claims 10, 119, 122, and 162-164.

Thus, reconsideration and withdrawal of these rejections is respectfully requested.

IV. The Anticipation Rejections

Claim 120 was rejected as anticipated under 35 U.S.C. 102(b). In support of the rejection, an improperly identified document (referred to in the Office Action as “Houck et al. ‘123”) was applied. This rejection is respectfully traversed.

According to 37 CFR 1.104(c)(2), “[i]n rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command.”

Explaining the precise requirements of such citation, 37 CFR 1.104 (d)(1) states:

If domestic patents are cited by the examiner, their numbers and dates, and the names of the patentees will be stated. If domestic patent application publications are cited by the examiner, their publication number, publication date,

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and the names of the applicants will be stated. If foreign published applications or patents are cited, their nationality or country, numbers and dates, and the names of the patentees will be stated, and such other data will be furnished as may be necessary to enable the applicant, or in the case of a reexamination proceeding, the patent owner, to identify the published applications or patents cited. In citing foreign published applications or patents, in case only a part of the document is involved, the particular pages and sheets containing the parts relied upon will be identified. If printed publications are cited, the author (if any), title, date, pages or plates, and place of publication, or place where a copy can be found, will be given.

Given that the "Houck" reference was not properly cited, this requirement has not been fulfilled. For at least this reason, Applicant respectfully submits that the rejection of claim 120 is unsupported and should be withdrawn.

V. The Obviousness-Type Double Patenting Rejections

Each of claims 1-119 and 122-175 was rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over various combinations of certain claims of U.S. Patent No. 10/208,631 (now issued U.S. Patent 7,226,240 ("Tyler")) and/or an improperly identified document (referred to in the Office Action as "Houck et al. '123"). Without acquiescing to the improper identification of the "Houck" document, Applicant respectfully submits that these rejections are moot in light of the "Terminal Disclaimer to Obviate a Double Patenting Rejection" that was submitted on 23 May 2007.

It is believed that given the submission this Terminal Disclaimer, all claims in this application are in condition for allowance, prompt notice of which is respectfully solicited.

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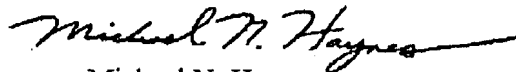
CONCLUSION

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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